

Message Text

SECRET

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67

ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 /026 W
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O R 262355Z FEB 75
FM AMEMBASSY QUITO
TO SECSTATE WASHDC IMMEDIATE 4605
INFO AMEMBASSY LIMA
AMEMBASSY MEXICO
AMEMBASSY SANTIAGO
USUN NEW YORK 396

S E C R E T SECTION 1 OF 2 QUITO 1397

STADIS//////////

EXDIS

FOR DEPUTY SECRETARY INGERSOLL AND UNDERSECRETARY MAW
FROM JOHN NORTON MOORE AND TOM CLINGAN

USUN FOR AMBASSADOR STEVENSON

DEPT PLEASE PASS ARA ROGERS, L OXMAN, D/LOS ESKIN,
OES/OFA SULLIVAN, DOD/ISA FRENCH, AND OJCS MORRIS

E.O. 11652: GDS

TAGS: PLOS EFIS PFOR EC

SUBJECT: DISCUSSIONS ON LOS AND TUNA

1. SUMMARY: MOORE, CLINGAN, AMBASSADOR BREWSTER, AND NEGROPONTE
MET WITH ECUADOREAN TEAM OF SUBSECRETARY VALDEZ, AMBASSADOR RAFAEL
GARCIA VELASCO AND MINISTER AYALA ON MORNING OF FEBRUARY 26TH
FOR FURTHER EXCHANGE OF VIEWS ON WAYS TO RESOLVE TUNA DISPUTE.
ECUADOREAN TEAM ACCEPTED U.S. PROPOSAL PRESENTED YESTERDAY AS
BASIS FOR DISCUSSION AND TWO SIDES HAD TWO HOURS
DETAILED DISCUSSION OF PROPOSED DRAFT ARTICLE. WITHOUT
NECESSARILY RESOLVING ALL DIFFERENCES, TWO SIDES WORKED OUT

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ON PERSONAL BASIS REVISED DRAFT ARTICLE CONTAINED PARAGRAPH 2.

ECUADOREAN TEAM INDICATED THEY WOULD WANT TO CONSULT PRESIDENT RODRIGUEZ LARA, FONMIN LUCIO PAREDES, AND CONCERNED STATES (PERU, CHILE, AND POSSIBLY MEXICO) AND THEN WOULD WELCOME A FURTHER EXCHANGE OF VIEWS WITH THE U.S. TEAM IN GENEVA.

2. FULL TEXT OF REVISED ARTICLE IS AS FOLLOWS:

BEGIN TEXT

ARTICLE DEALING WITH CONSERVATION OF TUNA AND CERTAIN OTHER SPECIES TO BE ADOPTED AS PART OF A SATISFACTORY COMPREHENSIVE LAW OF THE SEA TREATY

1) FOR PURPOSES OF RESEARCH, CONSERVATION AND PROTECTION OF SPECIES LISTED IN ANNEX A, COASTAL STATES IN THE REGION AND OTHER STATES WHOSE FLAG VESSELS HARVEST SUCH SPECIES IN THE REGION SHALL COOPERATE IN ESTABLISHING AN APPROPRIATE REGIONAL FISHING ORGANIZATION.

2) STATES ACTING THROUGH THE ORGANIZATION ESTABLISHED PURSUANT TO PARAGRAPH 1 SHALL, ON THE BASIS OF THE BEST SCIENTIFIC EVIDENCE AVAILABLE, AGREE ON ALLOWABLE CATCH AND OTHER CONSERVATION MEASURES WITHIN THE REGION INSIDE AND BEYOND (200 MILES), FOR SPECIES LISTED IN ANNEX A. THEY SHALL ALSO AGREE, THROUGH THE ORGANIZATION, ON REASONABLE UNIFORM LICENSE AND OTHER FEES APPLICABLE THROUGHOUT THE REGION FOR FISH OF SUCH SPECIES CAUGHT WITHIN (200 MILES) BY FOREIGN FLAG VESSELS, ON RULES FOR THE COLLECTION AND PAYMENT OF SUCH FEES TO THE COASTAL STATES AND ON ALLOCATION REGULATIONS. ALLOCATION REGULATIONS SHALL BE DESIGNED TO ENSURE FULL UTILIZATION AND EQUITABLE SHARING AND TO MINIMIZE ADVERSE ECONOMIC CONSEQUENCES. SUCH ALLOCATION REGULATIONS SHALL ALSO RECOGNIZE THE COASTAL STATE INTEREST IN AN APPROPRIATE PREFERENCE FOR ARTISAN FISHING AND VESSELS FISHING SOLELY WITHIN (40 MILES).

3) THE COASTAL STATE MAY PROVIDE FOR ASSOCIATION CONTRACTS OR OTHER LEGAL ARRANGEMENTS WITH FOREIGN FLAG VESSELS IN LIEU OF AGREED LICENSE OR OTHER FEES PAYABLE TO THE COASTAL STATE FOR FISH CAUGHT WITHIN (200 MILES).

4) THE COASTAL STATE MAY WITHIN (200 MILES) TAKE SUCH ENFORCEMENT MEASURES, INCLUDING INSPECTION, ARREST AND TRIAL, AS MAY BE NECESSARY TO ENSURE COMPLIANCE WITH ITS LAW AND REGULATIONS. SUCH MEASURES SHALL BE NON-DISCRIMINATORY, SHALL PROVIDE FOR PROMPT RELEASE OF VESSELS ON ESTABLISHMENT OF REASONABLE BOND AS SECURITY FOR THE OUTCOME OF THE TRIAL, AND SHALL NOT PROVIDE

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FOR PROSECUTION OR IMPRISONMENT OF MASTERS OR CREWS. STATES, ACTING THROUGH THE ORGANIZATION, SHALL AGREE ON EFFECTIVE MEASURES FOR ENFORCEMENT OF AGREED REGULATIONS IN AREAS BEYOND (200 MILES). STATES SHALL ALSO ENDEAVOR TO AGREE, THROUGH THE ORGANIZATION, ON A UNIFORM SYSTEM OF PENALTIES FOR VIOLATIONS OF AGREED CONSERVATION AND OTHER REGULATIONS.

5) THE REGULATIONS OF COASTAL AND FLAG STATES SHALL BE IN CONFORMITY WITH THE REGULATIONS AND MEASURES TO BE AGREED PURSUANT TO

THIS ARTICLE.

6) NOTHING IN THIS ARTICLE SHALL PREVENT A COASTAL STATE, OR STATES ACTING THROUGH THE ORGANIZATION, AS APPROPRIATE, FROM PROHIBITING THE EXPLOITATION OF MARINE MAMMALS.

7) (IF THE STATES CONCERNED ARE UNABLE TO AGREE ON ANY OF THE MATTERS SPECIFIED IN THIS ARTICLE, ANY STATE MEMBER OF THE ORGANIZATION MAY REQUEST, ON AN URGENT BASIS, PENDING AGREEMENT, THE ESTABLISHMENT OF MEASURES APPLYING THE PROVISIONS OF THIS ARTICLE PURSUANT TO THE DISPUTE SETTLEMENT PROCEDURES TO BE AGREED) -- OR -- (PENDING THE ESTABLISHMENT OF THE ORGANIZATION IN ACCORDANCE WITH THIS ARTICLE, THE PROVISIONS OF THIS ARTICLE SHALL BE APPLIED TEMPORARILY BY AGREEMENT AMONG THE STATES CONCERNED.)

ANNEX A

1. ALBACORE TUNA
2. BLUEFIN TUNA
3. BIGEYE TUNA
4. SKIPJACK TUNA
5. YALLOWFIN TUNA
6. POMFRETS
7. MARLIN
8. SAILFISHES

NOTE BY OC/T: NOT PASSED.

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ACTION SS-25

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9. SWORDFISH
10. SAURIES
11. DOLPHIN (FISH)
12. CETACEANS (WHALES AND PORPOISES)
END TEXT

3. PRINCIPAL AGREED CHANGES IN DRAFT PROPOSAL WERE AS FOLLOWS:

A) ECUADOREAN SIDE COULD NOT ACCEPT LANGUAGE IN PARAGRAPHS 1 AND 5 OF QTE SOVEREIGN RIGHTS TO EXPLORE AND EXPLOIT THE LIVING RESOURCES UNQTE AND INSTEAD PROPOSED QTE SOVEREIGNTY UNQTE WITHIN 200 MILES. DR. AYALA ALSO SUGGESTED POSSIBILITY OF USE OF PHRASE QTE SOVEREIGN RIGHTS WITHIN 200 MILES UNQTE AS COMPROMISE. ISSUE WAS RESOLVED BY SUGGESTION OF AMBASSADOR GARCIA THAT PERHAPS WE COULD SIMPLY LEAVE OUT PARAGRAPH 1 AND THE RELEVANT LANGUAGE OF PARAGRAHP 5.

B) BECAUSE OF ECUADOREAN CONCERN THAT TUNA SHOULD BE MANAGED WITHIN REGIONAL RATHER THAN INTERNATIONAL ORGANIZATION WORD INTERNATIONAL IN PARAGRAPH 2 WAS CHANGED TO REGIONAL. ECUADOREANS CLEARLY SOUTH REGIONAL ORGANIZATION COMPOSED SOLELY OF COASTAL STATES IN REGION AND EXLUDING JAPAN, FRANCE, AND OTHER NON-REGIONAL STATES BUT EXPLICITLY INCLUDING THE U.S. AS SECRET

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A COASTAL STATE WITHIN THE REGION. U.S. TEAM RESERVED ITS POSITION ON THIS POINT BUT ECUADOR NOW SEEMS TO BE CLEARLY ENDORSING THE MEXICAN SUGGESTION OF AN EXCLUSIVELY REGIONAL ORGANIZATION INCLUDING THE U.S. AS A COASTAL STATE WITHIN THE REGION.

C) THE LANGUAGE QTE INSIDE AND BEYOND (200 MILES) UNQTE WAS ADDED TO PARAGRAPH 3 TO MAKE CLEAR THAT THE REGIONAL ORGANIZATION WOULD DEAL WITH CONSERVATION OUTSIDE AS WELL AS WITHIN 200 MILES. THIS WAS IMPORTANT CLARIFICATION FOR ECUADOREANS AND MISPERCEPTION ON THIS POINT MAY HAVE BEEN RESPONSIBLE FOR LAST SUMMER'S LATIN PUSH FOR ISRA REGULATION OF THE RESOURCES OF THE WATER COLUMN BEYOND 200 MILES.

\$) THE DISPUTE SETTLEMENT PROVISION IN ARTICLE 7 WAS CHANGED TO ALTERNATIVE TEXTS FOR DEALING WITH THE PROBLEM OF NON-AGREEMENT OR NON-AGREEMENT IN PERIOD PRIOR TO THE NEW INTERNATIONAL ORGANIZATION. ECUADOREANS WERE CLEARLY WORRIED ABOUT DISPUTE SETTLEMENT ALTERNATIVE BUT SEEMED TO BE MORE RELAXED ABOUT SECOND ALTERNATIVE TAKEN FROM U.S. TUNA ARTICLE IN L 47.

E) MATERIAL BELOW THE LINE WAS DROPPED AT THE REQUEST OF AMBASSADOR GARCIA AS UNNECESSARY.

4. OTHER ISSUES DISCUSSED WHICH DID NOT RESULT IN CHANGES AT THIS TIME WERE:

A) ECUADOREANS SEEMED TO ACCEPT FULL UTILIZATION PRINCIPLE BUT WERE LEERY OF QTE EQUITABLE SHARING UNQTE AND QTE MINIMIZE

ADVERSE ECONOMIC CONSEQUENCES UNQTE LANGUAGE IN PARAGRAPH 3. THEIR CONCERN WAS THAT THIS LANGUAGE WOULD SANCTION ALLOCATION TO U.S. ON BASIS OF STATUS QUO IN HARVESTING CAPACITY.

B) THERE WAS AN ABIDING SENSITIVITY ON PART OF ECUADOREANS THAT THE AGREEMENT MUST NOT COMPROMISE ECUADOREAN SOVEREIGNTY. MOORE STRESSED THAT ANY STATE COULD ALWAYS ENTER INTO CONSERVATION AGREEMENT WITH OTHER STATES AND THAT ENTERING INTERNATIONAL AGREEMENTS WAS FULLY CONSISTENT WITH AND INDEED ITSELF CONSTITUTED AN EXERCISE OF SOVEREIGNTY. THIS IDEA OF A CONSERVATION AGREEMENT OR AGREED LOS ARTICLE ON CONSERVATION OF TUNA SEEMED TO BE THE FRAMEWORK WHICH ECUADOREANS BASICALLY ACCEPTED.

C) ECUADOREANS EXPRESSED APPRECIATION THAT PHRASE QTE HIGHLY MIGRATORY SPECIES UNQTE NOT USED. NEVERTHELESS THEY POINTED OUT FISH AND MAMMALS IN ANNEX A WERE ALL HIGHLY MIGRATORY AND THAT THEY WOULD HAVE TO CONSULT WITH OTHER AGENCIES WITHIN THE GOVERNMENT TO SEE IF THIS LIST WAS ACCEPTABLE.

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TM AT LUNCH HOSTED BY ECUADOREANS, MOORE PRIVATELY POINTED OUT TO DR. AYALA THAT ARTICLE THE TWO TEAMS WERE FOCUSING ON COULD BECOME BASIS FOR EARLY BILATERAL OR MULTILATERAL CONSERVATION AGREEMENT ON TUNA WITHIN THE REGION AS WELL AS AGREED ARTICLE IN LOS TREATY. DR. AYALA, HOWEVER, INDICATED THAT PAPPROACH SUGGESTED BY U.S. TEAM TO DISCUSS ISSUE IN FORMAT OF AGREED LOS ARTICLE ON CONSERVATION OF TUNA WAS PREFERABLE APPROACH IN VIEW OF INTEREST OF OTHER STATES IN REGION IN THE ISSUES.

6. U.S. INDICATED THAT IT MIGHT WISH TO DISCUSS PROPOSED ARTICLE WITH MEXICO AND POSSIBLY OTHERS. ECUADOREANS INDICATED THEY WOULD WISH TO CONSULT WITH PERU, CHILE, AND POSSIBLY ASLO MEXICO. TWO SIDES AGREED TO MEET AGAIN FOR FURTHER EXCHANGE OF VIEWS EARLY IN GENEVA SESSION OF LOS CONFERENCE.

7. MEMCON OF DISCUSSIONS WILL FOLLOW.

8. CMMENT: DISCUSSIONS WERE USEFUL AND SEEM TO HAVE FOUND AN APPROACH COMFORTABLE FOR THE ECUADOREANS. IF WE CAN WORK OUT PRAGMATICS OF TUNA MANAGEMENT SYSTEM WITH ECUADOREANS AND OTHER STATES OF REGION PRINCIPALLY CONCERNED IT WOULD MAKE IT EASIER TO FINESSE JURIDICAL PROBLEMS. APPROACH OF WORKING ON ARTICLE ON TUNA CONSERVATION WHICH STATES OF REGION COULD MUTUALLY SUPPORT IN LOS CONFERENCE IS COMPLETELY CONSISTENT WITH AND INDEED ENCOURAGES FURTHER POSSIBILITIES OF INTERIM CONSERVATION AGREEMENT ON BILATERAL OR REGIONAL BASIS OR ASSOCIATION CONTRACTS. HAD ECUADOREAN TEAM BEEN PREPARED TO FINALIZE UNDERSTANDING AT THIS TIME U.S. TEAM HAD ADDITIONAL FLEXIBILITY. FLEXIBILITY NOT NEEDED AT THIS TIME, HOWEVER, IN VIEW OF ECUADOREAN RELUCTANCE TO GO FURTHER WITHOUT ADDITIONAL STUDY AND CONSULTATIONS.

BREWSTER

NOTE BY OC/T: NOT PASSED.

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